

Designation of Matter in the Record on Appeal

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No, 2013-CP-26-00432

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APR 08 2015

SC Court of Appeals

THE STATE

Respondent

vs.

BENNY L. WEBB

Appellant

Designation of Matter in the Record on Appeal

Benny L. Webb

710 Windrow Drive

Sumter, South Carolina 29150

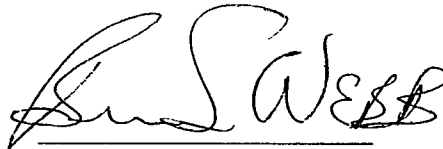
(803) 972-3613

Appellant, Pro Se

INDEX

1. Order of July 27, 2014; p. 1-2
2. Transcript of Proceedings, hearing of January 13, 2013 pp. 45-48; 141-142
3. Transcript of proceedings, hearing of May 14, 2014 pp. 3-7

March 19, 2015

A handwritten signature in black ink, appearing to read "Benny L. Webb", written over a horizontal line.

Benny L. Webb
710 Windrow Drive
Sumter, SC 29150
(803) 972-3613
Appellant, Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
State of South Carolina)
)
Respondent)
)
vs)
)
Benny Webb)
)
Appellant)
)
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IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-26-00432

ORDER AFFIRMING MAGISTRATE COURT

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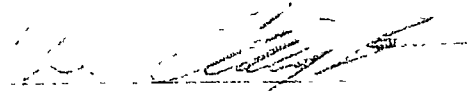
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MAR 20 2015
SC Court of Appeals

THIS MATTER COMES BEFORE THIS COURT by way of an appeal by (Appellant) of his conviction of Assault and Battery Third Degree on Warrant Number M842461 in Horry County Magistrate's Court on January 10, 2013. A hearing on this appeal was held in Horry County on May 14, 2014. John O'Leary, Esq. of O'Leary Associates, P.A. was present on behalf of Appellant, and J. Austin Thomas of the Fifteenth Judicial Circuit Solicitor's Office was present on behalf of Respondent. Based on the submissions before the court, oral arguments, South Carolina Rules of Civil Procedure and applicable case law, this Court finds that the trial court committed no reversible error in any of the grounds raised by Appellant on appeal. Specifically, this Court finds: (1) that the trial court did not err in ruling that an audio recording of the incident between Appellant and the alleged victim, Paul Curry, was admissible; (2) that the trial court did not err in refusing to charge the defense of property law as set forth in Appellant's requested jury charges one through four; (3) that the trial court did not err in finding that Appellant, as a town administrator, lacked the authority and/or power to remove a citizen from town premises when such citizen is making a valid FOIA request; and (4) that the trial court did not err in replacing a juror with an alternate juror.

Based on the foregoing, it is hereby

ORDERED that Appellant's conviction of Assault and Battery Third Degree is affirmed

AND IT IS SO ORDERED



Honorable D. Craig Brown
Circuit Court Judge

Florence, South Carolina

7-27 2014

pot. 2-21-14

1 Q: All right. I'm going to show you something.

2 I'm going to ask you if you recognize it, okay.

3 MR. O'LEARY: (Inaudible) that's fine.

4 A: This is a recording that I reviewed -- a CD

5 optical disk that contains a recording that I

6 reviewed in your office. It has my initials on

7 it and the date that I reviewed it.

8 Q: Okay. And what's --

9 MR. O'LEARY: Your Honor, I would object unless he

10 can identify the -- if that's the original or

11 a secondary copy or what. I'm not -- I'm not

12 clear on that. I ask that you clarify that.

13 MR. HUCKS: I will.

14 MR. O'LEARY: Okay.

15 Q: Now, is this the original recording that you

16 made?

17 A: No, the original recording was made on a

18 digital audio recorder.

19 Q: Okay. This is a copy you provided to either

20 the police or my office, right?

21 A: Correct.

22 Q: But you recognize this as a recording --

23 A: I do.

24 Q: -- of the interaction you had with Mr. Webb

25 that day?



1 A: Yes, the recording is on that CD.

2 Q: Now, the recording, does it truly and
3 accurately reflect your interactions with Mr.
4 Webb that day?

5 A: It does.

6 MR. HUCKS: And Your Honor, at this time, the State
7 would move the -- would ask to have the
8 recording marked as State's Exhibit Number One,
9 and ask to have it moved into evidence. We
10 would ask that you put the sticker on it later
11 so it doesn't --

12 THE COURT: So we'll know what --

13 MR. O'LEARY: Judge, I -- for the same objections
14 that we discussed.

15 THE COURT: Same -- same --

16 MR. O'LEARY: Yes, sir.

17 THE COURT: Notating your objection for the record.

18 MR. O'LEARY: Yes, yes.

19 THE COURT: Okay. Again.

20 (State's Exhibit No. One was marked for
21 identification purposes.)

22 MR. HUCKS: And, Your Honor, as it's now entered
23 into evidence, we'd ask permission to publish
24 it to the jury.

25 THE COURT: Okay. And he's already put his



PAUL CURRY
DIRECT EXAMINATION by MR. HUCKS

1 objection, so we're going to go ahead and I'm
2 going to allow it.

3 **MR. HUCKS:** The Court's indulgence, I'm borrowing a
4 computer. I'm not very good with my own.

5 **THE COURT:** Yeah, I understand. Take your time.

6 Q: Again, Mr. Curry, does this recording cover all
7 of your interactions with Mr. Webb that day?

8 A: It covers all of my interactions with Mr. Webb
9 on January 31st, yes.

10 Q: Now, on this recording, January 31st isn't the
11 date that you give. Why is that?

12 A: I made an error. The recording starts with my
13 entering the Town of Atlantic Beach and I
14 inadvertently announce the date as January 21st.

15 Q: But what's the date this all happens on?

16 A: The actual date that it occurred on is the 31st.
17 The 21st was a weekend when the Town Hall office
18 would not have been open.

19 Q: Now, I'm going to ask you to listen, the jury.
20 (The recording is played for the jury.)

21 **THE COURT:** Can y'all hear it okay?

22 (The recording continues to play.)

23 Q: Now, Mr. Curry, is this all of the recording
24 that you took that day? Is that all the
25 recording you did?



1 A: No, this is an eight minute -- approximately
2 eight minute segment of the recording. The
3 entire recording lasts about 28 minutes, I
4 believe.

5 Q: Okay. And why -- why did you (inaudible) that
6 piece?

7 A: I edited the recording to come off the end of
8 the recording from the time when the police
9 officer responds to take a report and then my
10 driving out of town.

11 **MR. O'LEARY:** Your Honor, I renew my objection.

12 **THE COURT:** Your objection is renewed, Mr. O'Leary.

13 Q: Now, did -- so what's cut out of the recording
14 when you submitted it to -- Agent Flowers
15 submitted it to me, what's missing out of all
16 that? Anything that has to do with Benny Webb
17 missing out of that?

18 A: It is not. Let me try to explain it this way.
19 I started the recording as I entered the Town
20 of Atlantic Beach. The recording -- the full
21 recording ends as I'm exiting the Town of
22 Atlantic Beach in my car. That entire length
23 of time is approximately 28 minutes. What you
24 heard is just the first part of the recording.
25 It stops where I have completed my call to



1 behind him was because a couple -- about six to
2 eight months earlier, I read a report, and I
3 want to make sure -- I read a report --

4 **MR. HUCKS:** Your Honor, the report's hearsay, Your
5 Honor.

6 **THE COURT:** Yes, I don't know where he's going with
7 this.

8 Q: Stay away from that.

9 A: Okay.

10 Q: But --

11 A: But so anyway --

12 Q: Whoa, whoa, whoa, just don't answer. You went
13 to the door after he went out, is that correct?

14 A: That's correct.

15 Q: Okay. Now, you heard the tape today and is
16 that what really occurred?

17 A: No, again, when I first heard that tape, I knew
18 that that tape was altered. I knew it.

19 Q: Why is that?

20 A: Because I knew what I said to him. I knew I
21 never told him that -- that I touched him or I
22 was putting my hand on him. I will admit to
23 what I said to him outside. But I never put my
24 hand on him and I never told him that I put my
25 hand on him. That tape was altered from the



BENNY L. WEBB

DIRECT EXAMINATION BY MR. O'LEARY

1 time I saw it.

2 Q: Is that -- and the tape in here today wasn't

3 the complete tape, was it?

4 A: It was not the complete tape.

5 Q: Okay. Now, let me ask you this, you -- you

6 went to the doorway and did you go outside? We

7 don't know -- maybe the jury doesn't know. I

8 know I don't know the layout of the building:

9 Do you physically go out into like a courtyard

10 or what is that?

11 A: It's a little walkway.

12 Q: Okay.

13 A: And it has a bench that you walk out the front

14 door on the right-hand side.

15 Q: Okay.

16 A: I walked out --

17 Q: Uh-huh (affirmative response).

18 A: -- because I wanted to make sure that he left.

19 Q: Okay.

20 A: Instead of leaving, he walked out and went and

21 sat on the bench --

22 Q: Okay.

23 A: -- so I continued to tell him to leave.

24 Q: Okay.

25 A: To leave.



1 **THE COURT:** The next case on the roster is Benny Webb
2 v. South Carolina, The State of South Carolina.

3 **MR. O'LEARY:** Good afternoon, Judge.

4 **THE COURT:** Afternoon. How are you doing, Mr.
5 O'Leary?

6 **MR. O'LEARY:** Pretty good.

7 Judge, I'm submitting to the Court -- there's a
8 Memorandum of Law. Essentially, they're the same thing.
9 The difference is that one of them was based upon a
10 transcript that was incomplete, and then they came back
11 and they got a regular transcript. Judge, essentially,
12 this is an appeal.

13 **THE COURT:** All right. Let me hear from you, Mr.
14 O'Leary.

15 **MR. O'LEARY:** This is an appeal from a conviction of
16 assault and battery down at -- in the magistrate's court.
17 What happened was, there was a mix up on the transcripts.
18 They provided us with some kind of a -- some kind of a CD
19 or something. It didn't work. It was incomplete. They
20 went back, and then we got the real one and sent it to the
21 clerk. Now we've got -- got this.

22 But the first issue that was raised on this appeal
23 was about the tape recordings. It was a tape recording
24 that was admittedly not complete. It had been altered.
25 It wasn't the total.

1 It was eight minutes. It was a twenty-eight minute
2 tape. That tape recording, admitted by the person who
3 made it, that it had been altered. You know, we objected
4 to the admission of the tape recording, and we felt that
5 was reversible error to put that tape recording in in that
6 condition.

7 The second issue was we requested a jury charge with
8 reference to Benny Webb, who was the City Manager at the
9 time. He had an altercation with a man who came into the
10 building. I asked the Court to charge -- to charge the
11 jury that as the manager, he had a right to maintain the
12 property. He had a right to put somebody off of the
13 property, and that jury charge was denied.

14 Along with that jury charge, we asked that the
15 manager would have -- pardon me, I have a cold -- would
16 have the right to use reasonable force to put the person
17 off. So, it was really two defenses. One, defense of
18 property. Property owner can put somebody off after
19 notice of asking the persons to leave, they have to leave.

20 The Court felt that the manager didn't have the
21 authority to ask somebody to leave the property. And I
22 think clearly that jury charge should have gone to the
23 jury about the right of a person in charge of property to
24 ask a person to leave from that property and that that
25 person would have the right to use reasonable force to

1 remove a person from that property.

2 Those are essentially the issues. Hopefully it's not
3 too confusing in that Memorandum of Law, because the pages
4 differ from the two transcripts. That's why I want to
5 make sure that you've got the right one.

6 But I tried to put in there the issues as to the tape
7 recording. We thought the court rules, as well as the
8 case law, says you've got to authenticate it, and
9 basically, it -- it wasn't in its original condition.

10 It actually was a tape recording that was edited by
11 the person that made it, sent to a radio station, and that
12 in turn came back to the police department, and it wasn't
13 the original. It was altered and edited, and we felt that
14 that was -- that was -- that should be reversible error by
15 using that tape recording.

16 Judge, it's set forth in the memorandum the cases
17 that support both of those propositions. And the statute
18 for a municipality says that the manager has pretty broad
19 authority. The statute is to be interpreted broadly.

20 It doesn't specifically say that he can put somebody
21 off the property, except if they're an employee. But I
22 think you can infer in that that if he's in charge of that
23 property, he has a duty to protect the property. And if
24 he's wrong, the man who was ejected from the property
25 could bring a lawsuit or different avenue for him.

1 And we felt it was error for the Court -- for the
2 Court not to issue those jury charges to the jury, as well
3 as reversible error from the -- I was just trying to read
4 this -- from the tape recording itself, Judge.

5 **THE COURT:** All right.

6 Yes, sir? Mr. Thomas?

7 **MR. THOMAS:** Please the Court, Your Honor? As far as
8 the first argument, the admissibility of the tape
9 recording, the judge, trial court judge found that the
10 only editing done by the victim in this case who made the
11 recording on a digital recorder and subsequently
12 transferred that recording to a disk, the judge found that
13 it was only -- the only portions removed were portions
14 subsequent to this encounter with the defendant in this
15 case, the appellant in this matter, and after the
16 confrontation ended. That's supported by the evidence in
17 this case. It's supported by the testimony of the victim
18 in this case.

19 He stated under oath that the entire encounter was on
20 the tape. The only thing that was edited out was excess
21 after the encounter.

22 He put it onto a disk, and he did send it out to
23 various outlets, including directly to the police station
24 and the solicitor's office, and that's where that tape
25 came from. That was all set forth through testimony, and

1 the tape was allowed into evidence.

2 As far as the second argument goes, failure to charge
3 defense of property laws, Your Honor, the Castle Doctrine
4 is the protection of the home, automobile, business.
5 These are all places where you have a right to exclude
6 others and sole enjoyment. This is a case where they're
7 at a town hall, a public place where the victim in this
8 case was exercising a right.

9 In this case it was to obtain information through the
10 Freedom of Information -- Freedom of Information Act. He
11 actually came in there armed with an order from a circuit
12 court judge saying that he did not have to go through
13 certain procedures, as far as they had a procedure where
14 you have to sign in and do A and B before you could
15 request this information.

16 He simply requested the information, as per the order
17 from the judge, as he was allowed to do, and then that's
18 when this confrontation took place. He was in a public
19 place where he had the right to be.

20 I believe the appellant's argument here is that a
21 Town Administrator has a right, I guess, has authority
22 over the whole town and can say: You have to leave.
23 You're no longer allowed here.

24 And then have the right to escort him out, get him
25 out of the town, no matter where they are. I guess their

CERTIFICATE OF SERVICE OF THE DESIGNATION OF MATTER IN THE APPEAL ON RECORD

THE STATE OF SOUTH CAROLINA

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D. Craig Brown, Circuit Court Judge

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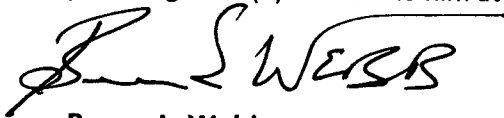
vs.

Benny L. Webb

Appellant

CERTIFICATE OF SERVICE OF INITIAL BRIEF

I Certify that I have served the Designation of Matter in the Record on Appeal on J. Scott Hucks on April 6, 2015 by certified mail by sending three(3) of them to him at 1301 2nd Avenue, Conway, South Carolina 29526.



Benny L. Webb

710 Windrow Drive

Sumter, South Carolina 29150

(803) 972-3613

Appellant, Pro Se